IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 384 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SOMABHAI BHANABHAI RATHOD

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 384 of 2000
   THROUGH JAIL for Petitioner No. 1
   MS SADHNA SAGAR - Amicus Curiae
   MR ND GOHIL, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 27/07/2001

ORAL JUDGEMENT

The appellant accused was convicted for the offence under Section 307 IPC and sentenced to suffer 7 years RI and to pay a fine of Rs. 1,000/- in default to

further undergo 2 months sentence. The aforesaid order of conviction and sentence passed by the learned Trial Judge on 30.10.1999 was challenged by the appellant accused through jail. Ms. Sadhna Sagar for the appellant accused had not challenged the order of conviction when this appeal was posted for admission on 25.7.2001 and restricted her challenge on the point of sentence only. Therefore, paper-book of this appeal was dispensed with and it was kept today for final disposal on the point of sentence.

Ms. Sadhna Sagar submitted that it was really a pathetic case where the appellant accused who is not in a sound state of mind and a schizophernic and lunatic patient was convicted by the trial Court for the offence under Section 307 and sentenced to suffer 7 years RI. The appellant accused is the real brother of the injured and it has come on the evidence of the prosecution witnesses that the appellant accused had the feeling that someone is going to kill him and in the night when his brother and others were sleeping in the house, all of a sudden he took the axe and gave a solitary blow to his brother. He was arrested immediately after the incident and since 14.8.1997, the accused is in jail. Thus, nearly for a period of 4 years he has remained in jail. He is a poor person having large family to maintain. Except this he was never convicted in any other offence. Considering the peculiar facts and circumstances of the case, I am of the considered opinion that this is a fit case in which not only the substantive sentence as already undergone would meet the ends of justice, but also the order of fine is required to be quashed and set aside.

Accordingly, while confirming order of conviction under Section 307 IPC passed by the trial Court, substantive sentence of 7 years RI imposed by the trial Court for the offence under Section 307 IPC against the accused - appellant is hereby reduced as sentence already undergone. Order of fine of Rs. 1,000/- is also hereby quashed and set aside. Accordingly, this appeal is partly allowed on the question of sentence. If the appellant accused is not required in any other case, then he may be set at liberty forthwith. Fine if already paid, be refunded.

(B.J.Shethna, J.)

*/Mohandas